



POLICE DEPARTMENT

February 13, 2020

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In the Matter of the Charges and Specifications : Case No.
- against - : 2017-18327
Police Officer Vincent Nevling :
Tax Registry No. 950943 :
40 Precinct :

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Vincent Nevling, while on-duty and assigned to the 44th Precinct, on or about August 22, 2017, having arrested an individual known to the Department, wrongfully failed to remain with said prisoner at all times, as required.

P.G. 208-02, Page 1, Paragraph 6

ARRESTS - REMOVAL TO
DEPARTMENT FACILITY FOR
PROCESSING ARRESTS

2. Said Police Officer Vincent Nevling, while on-duty and assigned to the 44th Precinct, on or about August 22, 2017, having arrested an individual known to the Department, wrongfully failed to remove all dangerous items from said prisoner, as required.

P.G. 208-05, Page 1, Paragraph 1 (B)(1)

ARRESTS - GENERAL SEARCH
GUIDELINES ARRESTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 21, 2020. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Shanay Boone-Vasquez and Detective Kenneth Juart, and introduced video footage from the incident. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent guilty, and recommend a penalty of thirty (30) vacation days.

ANALYSIS

At approximately 0100 hours on August 22, 2017, Respondent and his partner, Police Officer Shanay Boone-Vasquez, responded to a call for an assault-in-progress at an apartment on [REDACTED]. Respondent arrested Person A for allegedly punching and biting his wife. Person A and his wife were separately transported to the 44 Precinct. At the stationhouse, the complainant was brought to the 124 room by Officer Boone-Vasquez, while [REDACTED]

Respondent dealt with Person A, preparing the prisoner pedigree card at the desk. Respondent and another officer then escorted Person A to the holding area, had him remove his shoelaces and belt, and placed him inside the cell. Approximately three minutes later, Person A took his own life by using the drawstrings from his shorts legs to hang himself inside the cell. Respondent faces two charges, for failing to remain with his prisoner, and for failing to remove all dangerous items from his prisoner.

Video footage from a camera positioned in the cell area was admitted into evidence (Dept. Ex. 2). In that footage, Respondent and another officer can be seen escorting [REDACTED] to a bench outside the cell at about 1:33:27. Respondent uncuffs his prisoner, and Person A then removes his own shoelaces and hands them to the other officer. Respondent points to Person A's waist area, and the prisoner stands and removes his belt, which he also hands to the other officer. After the belt is removed, Respondent unlocks the cell door and gestures for Person A to enter the cell. As Person A walks by Respondent and into the cell at 1:34:48, a drawstring dangling from the right side of his cargo shorts leg is clearly visible. Respondent locks the door, and at 1:35:00 the officers exit the cell area.

Person A sits on a bench inside the cell. There is one other prisoner inside the cell as well, who appears to be sleeping on the same bench. At 1:35:10, Person A yanks the drawstring from the right side of his shorts leg, and seconds later does the same with the drawstring from the left side of the shorts. He then ties the two strings together and walks to the side of the cell near the door, where he fastens one end of the string around the gate. At 1:37:26, [REDACTED] places a loop at the end of the string over his head and squats down, strangling himself; his body appears to stop moving at 1:40:00. Almost 10 minutes later, the other prisoner in the cell awakes, sees what has happened, and persistently calls officers to the cell. At 1:50:39

a sergeant comes to the cell, sees the situation, and summons assistance. Multiple officers rush to the area, and unsuccessfully attempt to revive Person A.

Officer Boone-Vasquez, Respondent's partner that night, testified that she did not observe anything out of the ordinary regarding Person A's behavior. He did not appear to be an emotionally disturbed person, did not seem high or intoxicated, and was compliant with the officers. When they arrived at the precinct, Officer Boone-Vasquez was inside the 124 room working on the paperwork for the arrest. Respondent, who also was in the room, left when there was a commotion in the holding cell. (Tr. 37, 40-41, 47, 53-54)

Detective Kenneth Juart, who at the time of the incident was with the Force Investigation Division, testified that he was assigned to investigate this matter. He explained how as the arresting officer, Respondent was responsible for keeping an eye on his prisoner, and for removing from his prisoner anything that could be used to harm himself or others, including the drawstrings dangling from Person A's shorts. Detective Juart testified that normally a cell attendant would be assigned to check on the cell every 30 minutes; he did not know why there was no cell attendant assigned that day. The detective also testified that there was a surveillance camera in the cell area that transmitted live footage to a monitor at the desk, approximately 10-15 feet away, and that it was the responsibility of the desk sergeant to monitor activity in the cell. (Tr. 64-66, 67-70)

The parties agreed to admit a recording and transcript of the Department interview of the desk officer, Sergeant Tony Chacko¹, which occurred on the day of the incident (Dept. Ex. 1 and 1A). In that interview, Sergeant Chacko stated that Person A appeared normal and cooperative when he was brought to the desk, and there was no medical attention requested. At

¹ Sergeant Chacko also received charges and specifications in connection with this matter. On October 17, 2019, he entered a plea of guilty to the charges, and agreed to forfeit thirty (30) vacation days. That plea agreement is pending before the Police Commissioner.

some point, Sergeant Chacko looked to his right and saw a prisoner in the holding pen waving him over. The sergeant went to the cell, saw Person A on the floor, and summoned assistance. Sergeant Chacko tried to administer CPR, and requested EMS. (Dept. Ex. 1A at 8, 17-18)

The parties also stipulated to the admission of a time line of what occurred on the date of the incident based on the video footage (Resp. Ex. A), and the "Final Diagnoses" from the autopsy report (Resp. Ex. B), which indicated that Person A had acute intoxication by alcohol and cocaine in his system at the time of his death.

Respondent testified that it was determined he would be the arresting officer while they still were inside the Bronx apartment. Person A was compliant with the officers' instructions, and did not reveal any signs that he had consumed alcohol or cocaine. At the stationhouse, he had his prisoner remove his shoelaces and belt before entering the cell. Respondent maintained that at the time of the incident, he "simply didn't notice" the drawstrings on Person A's shorts; he acknowledged seeing the drawstrings on the video footage after-the-fact. Respondent insisted that if he had noticed them at the time he lodged his prisoner, he "would absolutely have removed the particular items," since they were a potential threat to Person A or others. (Tr. 86, 89-91, 100-01, 108-12, 114)

After placing his prisoner inside the cell, Respondent left the cell area and went to the 124 room in order to prepare his paperwork. According to Respondent, there was no suitable work space in the cell area, and they also wanted to keep the complainant separated from the prisoner. About five-to-seven minutes later, he heard a commotion and went to the cell area, where he observed Person A on the floor. Respondent was told to step away as officers attended to the prisoner. (Tr. 91-95)

Specification 1 charges Respondent with wrongfully failing to remain with Person A

at all times as required. Section 208.02 (6) of the Patrol Guide requires an arresting officer to remain with prisoner at all times unless relieved by arrest processing officer.

" Here, it is undisputed that Respondent, the arresting officer, left his prisoner unattended for a period of time after placing him inside the holding cell. Specifically, Respondent left the cell area at approximately 1:35:00 hours. There was no officer in the cell area for 15 minutes, until Sergeant Chacko came to the cell at 1:50:39 and discovered that Person A had hung himself. Indeed, the police response to the cell was only after another prisoner persistently summoned the officers there.

Counsel for Respondent argues that Respondent was in the 124 room doing the necessary paperwork at the time, and this all happened very quickly. Counsel also notes the absence of a cell attendant, and that the desk sergeant failed to monitor the cell as well. None of that, however, excuses Respondent's failure to remain with his prisoner. Person A had just been arrested for a domestic assault, and even if Respondent and his partner believed that Person A was not exhibiting any signs of self-destructive behavior, Respondent had the responsibility to stay with his prisoner. This he failed to do, and I find him guilty of Specification 1.

Specification 2 charges Respondent with wrongfully failing to remove all dangerous items from his prisoner. Section 208-05 (1)(B)(1) of the Patrol Guide states, "Upon arrival at precinct of arrest or other Department facility, the arresting officer ...shall conduct a thorough search of the prisoner's person and clothing to ensure the safety of all persons within the facility and to remove weapons, contraband, and evidence not discovered by the frisk. Other items lawfully carried but that are dangerous to life, may facilitate escape, or may be used to damage Department property will also be removed from the subject." Items such as shoelaces, belts, and drawstrings fall squarely within this category.

Respondent acknowledged that he failed to remove the drawstrings from his prisoner's shorts. Respondent insisted that he did not notice the drawstrings, and would have removed them if he had. Counsel for Respondent argues that under these circumstances, Respondent did not commit misconduct. I disagree. From the video footage, the drawstrings dangling from the prisoner's shorts leg were plainly evident. Respondent, as the arresting officer, could readily have observed and removed the drawstrings if he had been reasonably thorough in inspecting his prisoner. Respondent's failure to do so was wrongful.

The tragic result here is precisely what the Patrol Guide rule is designed to prevent. Respondent failed to do a thorough search of his prisoner's clothing, and Person A was left unattended in a cell in possession of the drawstrings that he used to hang himself. It was Respondent's responsibility to remove those dangerous items. This he failed to do, and I find him guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record.

Respondent has been found guilty of two specifications, for not remaining with his prisoner, and for failing to remove all dangerous items from the prisoner before leaving him unattended in the holding cell. The Department Advocate recommends a penalty of thirty (30) vacation days. After carefully considering the circumstances in this case, I agree with that recommendation.

This tribunal is mindful that Respondent did have his prisoner's belt and shoelaces removed before placing him in the cell, and that the officer then went to the nearby 124 room to prepare paperwork for his arrest. Even so, the act of leaving [REDACTED] unattended in the cell, after failing to remove the drawstrings from his shorts, created a volatile situation. The drawstrings left in [REDACTED] possession posed a threat to the other prisoner in the cell, the police officers at the precinct, and ultimately [REDACTED] himself. [REDACTED] used the drawstrings to take his own life. Members of service have a responsibility to protect the lives of individuals in their custody. In this instance, Respondent failed in that obligation.

In *Disciplinary Case No. 2010-1695* (Mar. 11, 2013), a companion case to one of the cases cited by the Department Advocate, an 11-year police officer with no disciplinary record negotiated a penalty of 31 pre-trial suspension days for failing to remain with his prisoner, and for failing to remove a drawstring from his prisoner's shorts. There, as here, the prisoner's belt and shoelaces were removed, but not the drawstring. The prisoner, who had been arrested for a domestic assault, then used the drawstring to hang himself.

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit thirty (30) vacation days.

APPROVED

APR 15 2020

DERMOT SHEA
POLICE COMMISSIONER

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER VINCENT NEVLING
TAX REGISTRY NO. 950943
DISCIPLINARY CASE NO. 2017-18327

Respondent was appointed to the Department on July 6, 2011. On his last three annual performance evaluations, he twice received 4.0 overall ratings of "Highly Competent" for 2016 and 2014, and received a 3.5 overall rating of "Highly Competent/Competent" for 2015. [REDACTED]

[REDACTED]

Respondent has no formal disciplinary history. In connection with the instant Charges and Specifications, he was placed on Level 1 Discipline Monitoring on July 13, 2018; that monitoring remains ongoing.

For your consideration.

A handwritten signature in blue ink, appearing to read "Jeff S. Adler".

Jeff S. Adler
Assistant Deputy Commissioner Trials